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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,176	10/17/2001	Andrew C. Gallagher	83407THC	5628

7590 04/07/2005  
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EXAMINER

BAKER, CHARLOTTE M

ART UNIT PAPER NUMBER

2626

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/981,176

Applicant(s)

GALLAGHER ET AL.

Examiner

Charlotte M Baker

Art Unit

2626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

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PRIMARY EXAMINER**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/17/01, 09/14/04.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities: p. 1, ln. 15, replace “then with –than--; p. 1, ln. 15, replace “smoky black” with –smokey black—to match claim language; p. 6, ln. 4 and 5, replace “smoky black” with –smokey black--; p. 7, ln. 8, replace “smoky black” with –smokey black--; p. 6, ln. 24, replace “gap 24” with –gap 24)--; p. 10, ln. 24, replace “adjuster 46” with –adjustor 46—to match Fig. 4.; p. 11, ln. 12 and 16, replace “smoky black” with –smokey black--; p. 11, ln. 25, replace “smoky black” with –smokey black--; p. 12, ln. 2, 5, and 6, replace “smoky black” with –smokey black--; p. 14, ln. 7, replace “smoky black” with –smokey black--; p. 15, ln. 2, replace “smoky black” with –smokey black--; p. 15, ln. 14, replace “smoky blacks” with –smokey blacks--; .

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the

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reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1 and 3-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Loushin et al. (6,462,835).

**Regarding claim 1:** Loushin et al. disclose determining a maximum dark value (darkest usable portion, col. 5, ln. 12-15) for the image capture system (Fig. 1, system 10) representing the response of the system to no light exposure (col. 5, ln. 12-15); generating an image processing path (see Fig. 1 from scanner 12 to software-based system 14) for processing the image prior to display on an output device (intended display device, col. 9, ln. 63 through col. 10, ln. 3), the image processing path (see Fig. 1) having one or more image dependent image transforms (Fig. 1, parameterized calibration curves, RGB histograms, and RGB LUTs), that upon processing the maximum dark value (darkest usable portion, col. 5, ln. 12-15) produces a processed maximum dark value (Fig. 1, reconstructed image) that meets a predetermined criteria (data contained in LUTs) for darkness such that the "smokey black" problem is minimized (ensuring mostly black areas are represented in that manner, note example of campfire at night, col. 11, ln. 43-65); and applying the image processing path (see Fig. 1) to the photographic image (Fig. 1, image data) to produce a processed photographic image (Fig. 1, reconstructed image).

**Regarding claim 3:** Loushin et al. satisfy all the elements of claim 1. Loushin et al. further disclose using an identification code (film type identifier code, col. 7, ln. 37-59) associated with the film that points to a Dmin value (under-exposure of a scanned image, col. 5, ln. 42-48) stored in a data base (Fig. 1, exposure curve generation module 16).

**Regarding claim 4:** Loushin et al. satisfy all the elements of claim 1. Loushin et al. further disclose providing a plurality of different processing paths (Figs. 5 and 6); propagating the maximum dark value (darkest usable portion, col. 5, ln. 12-15) through different processing paths (Figs. 5 and 6); choosing the processing path (Figs. 5 and 6) that produces the most desirable processed maximum dark value (read from memory or input by the user, col. 12, ln. 64-67 through col. 13, ln. 1).

**Regarding claim 5:** Loushin et al. satisfy all the elements of claim 1. Loushin et al. further disclose providing a base image processing path (see Fig. 1); propagating the maximum dark value (darkest usable portion, col. 5, ln. 12-15) through the base image processing path (see Fig. 1); modifying one or more image transforms (Fig. 1, parameterized calibration curves, RGB histograms, and RGB LUTs) the base image processing path (see Fig. 1) based on the propagated maximum dark value (darkest usable portion, col. 5, ln. 12-15) to produce the generated image processing path (see Fig. 1).

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Loushin et al. in view of Zinchuk (4,151,560).

**Regarding claim 2:** Loushin et al. satisfy all the elements of claim 1.

Loushin et al. fail to specifically address scanning an interframe gap between frames on the film.

Zinchuk discloses scanning (Fig. 1, line scanners 14) an interframe gap (inter-frame gap, col. 4, ln. 35-39 and ln. 57-62) between frames on the film (film strip 12).

It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify scanner 12 of Loushin et al. to incorporate the scanning of an interframe gap as suggested by Zinchuk (col. 4, ln. 35-39 and ln. 57-62) for the purpose of determining a maximum dark value between image frames of film.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charlotte M Baker whose telephone number is (571)272-7459. The examiner can normally be reached on Monday-Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kimberly A Williams can be reached on (571)272-7471. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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